

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petitions:** 45-004-13-1-5-00267-16  
45-004-17-1-5-01056-18  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel:** 45-08-04-129-015.000-004  
**Assessment Years:** 2013, 2017

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

**PROCEDURAL HISTORY**

1. Nowacki contested the 2013 and 2017 assessments of his property located at 281 Tyler Street in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations valuing the residential property at \$9,900 (\$4,300 for land and \$5,600 for improvements) for 2013 and \$1,800 (land only) for 2017.
2. Nowacki filed Form 131 petitions with the Board and elected to proceed under our small claims procedures. On February 18, 2020, Ellen Yuhan, our designated Administrative Law Judge (“ALJ”) held a hearing on Nowacki’s petitions. Neither she nor the Board inspected the property.
3. Nowacki appeared pro se. The Assessor appeared by his Hearing Officers, Robert Metz and Joseph E. James. They were all sworn as witnesses.

**RECORD**

4. The official record for this matter contains the following:
  - a. Petitioner Exhibit A: Notices of Hearing; two property record cards (“PRCs”) for subject (2008-2019); GIS map
  - Petitioner Exhibit B: Request for Public Record
  - Petitioner Exhibit C: Cover letter for Kovachevich appraisal for 1109 Oklahoma Street; land comparison approach; PRC (2015-2019); and tax bill
  - Petitioner Exhibit D: Cover letter for Kovachevich appraisal for 739-29 W. 35<sup>th</sup> Avenue; land comparison approach; and PRC (2015-2019)

Petitioner Exhibit E: Cover letter for Kovachevich appraisal for 2517-2525 Washington Street; land comparison approach; and PRCs (2015-2019) for each parcel

Petitioner Exhibit F: Enlargement of page 17 (land comparison approach comparable sales list from appraisals)

Petitioner Exhibits G-GG: PRCs for the properties listed in the land comparison approach<sup>1,2,3</sup>

- b. The record for the matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in these appeals; (2) all notices and orders issued by the Board or our ALJ; and (3) an audio recording of the hearing.

### **BURDEN OF PROOF**

5. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances--where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I. C. § 6-1.1-15-17.2 (b) and (d).
6. Here, the value of the property increased less than 5% from 2012 to 2013, and decreased from 2016 to 2017. Nowacki therefore bears the burden of proof for both years.

### **OBJECTIONS**

7. The Assessor objected to Petitioner Exhibits C, D and E on grounds of admissibility. He also argued that Exhibits B through GG were irrelevant. The appraisals are not for the subject property, and Nowacki is not an intended user or authorized to use the appraisals. The Assessor also cites to a Uniform Standards of Professional Appraisal Practice ("USPAP") Advisory Opinion, which states that, while a person may have a copy of an appraisal, that person is not an intended user unless he was specifically identified by the appraiser. Nowacki received the appraisals in response to a Freedom of Information request. The ALJ took the objections under advisement. Because the exhibits provide information about other Lake County properties, they have at least minimal relevance to this proceeding. Whether Nowacki is listed as an intended or authorized user for these appraisals is not sufficient reason to exclude them. We therefore overrule the objections and admit Exhibits B-GG. We note that these exhibits do not affect the outcome.

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<sup>1</sup> Exhibit F lists a PRC for 4522 Cedar Avenue in Hammond, but no PRC for that address is found in the exhibits.

<sup>2</sup> Nowacki provided only one set of Exhibits B-GG for all hearings held this date. 52 IAC 2-7-1 provides that evidence must be submitted into the record of proceeding for it to be considered by the Board. In future hearings, the parties must prepare and submit a copy of all evidence they wish to be considered into the record at each hearing.

<sup>3</sup> The Assessor submitted no exhibits.

8. The Assessor objected to comments made by Nowacki. He argued that they were irrelevant. He also objected to the assertion that the Lake County Assessor had failed to make corrections to assessments in Calumet Township. The ALJ took the objections under advisement. The Assessor's objections go to the weight of the evidence, which is solely within the discretion of the Board. Neither the comments regarding the Assessor's alleged lack of corrective action or the racial disparity of assessments have any real bearing on this proceeding. Nevertheless, as they may have some minimal relevance, we overrule the objections, and note that the comments do not affect the outcome of this case.

#### SUMMARY OF CONTENTIONS

9. Nowacki's case:
  - a. This property churned through the system for at least 30 years. The purchase price Nowacki paid was \$50, so the Assessor's office should have known there was little value to the property. Market value is represented by what a willing buyer under no burden to purchase and what a willing seller under no burden to sell would value the property. The auction at which Nowacki purchased the property was attended by hundreds of eligible and able bidders. No one offered more than a nominal amount for it. There is no improvement on the property now, and there was no improvement in 2013. The value of the property was corrected in 2016. The Assessor then raised it again to \$9,400 in 2017. Nowacki believes the value of the property should be \$800 for both years. *Nowacki testimony; Pet'r Ex. A.*
  - b. The appraisals show the systematic over-assessment of properties in Lake County, and specifically in Calumet Township. This has a negative impact on the primarily black community. Taxpayers are subject to the abuses of the Calumet Township Assessor, Lake County Assessor, PTABOA, Auditor and Treasurer. This process has taken seven years, but this error could have been corrected at any time. *Nowacki testimony; Pet'r Exs. C, D, E.*
10. The Assessor's case:
  - a. The Lake County Assessor does not have jurisdiction to correct property assessments in Calumet Township until they come before the Indiana Board of Tax Review. The Assessor concedes there was no improvement on the property in 2013, and recommends the value be reduced to \$2,200 for land only. The Assessor recommends no change to the 2017 value of \$1,800. *James testimony.*

#### ANALYSIS

11. The Assessor conceded this property had no improvement in 2013 or 2017, and the assessment for 2013 should be reduced to \$2,200. Nowacki sought a further reduction for 2013, but failed to make a case to support his requested value. Nowacki also failed to

make a case for reducing the 2017 assessment. The Board reached this decision for the following reasons:

- a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. "True tax value" does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines "true tax value" as "market value in use," which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." MANUAL at 2.
- b. Evidence in an assessment appeal should be consistent with that standard. For example, market value-in-use appraisals that comply with the Uniform Standards of Professional Appraisal Practice often will be probative. *See id.*; *see also Kooshtard Property VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). So may cost or sales information for the property under appeal, sales or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *Id.*; *see also* I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments in property-tax appeals but explaining that the determination of comparability must be made in accordance with generally accepted appraisal and assessment practices). The party must offer relevant market-based evidence. March 1<sup>st</sup> is the legal assessment date for 2013. January 1<sup>st</sup> is the assessment date for 2017. Ind. Code § 6-1.1-2-1.5(a).
- c. Nowacki contends the assessment should be \$800 for both 2013 and 2017, but he failed to present any probative market-based evidence to support that value. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
- d. Nowacki further claims that the appraisals show the three appraised properties are over-assessed; therefore the subject property must also be over-assessed. We interpret and address this argument as a challenge to the uniformity and equality of his assessment. The Tax Court has previously held, "when a taxpayer challenges the uniformity and equality of his or her assessment, one approach he or she may adopt involves the presentation of assessment ratio studies which compare the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sale prices or market value-in-use appraisals." *Westfield Golf Practice Ctr., LLC v. Wash. Twp. Ass'r*, 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007). Such studies, however, must be prepared according to professionally acceptable standards and be based on a statistically reliable sample of properties that actually sold. *Bishop v. State Bd. of Tax Comm'rs*, 743 N.E.2d 810, 813 (Ind. Tax Ct. 2001). When a ratio study

shows that a given property is assessed above the common level of assessment, that property's owner may be entitled to an equalization adjustment. *See Dep't of Local Gov't Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227 (Ind. 2005) (holding that the taxpayer was entitled to seek an adjustment on grounds that its property taxes were higher than they would have been if other property in Lake County had been properly assessed).

- e. The data Nowacki submitted is insufficient to support a uniform and equal argument. Not only did Nowacki provide incomplete appraisals, he failed to compare the properties to the subject property. He did not address similarities or differences. Although Nowacki presented data for other Lake County properties, he did not show that his incomplete data met the standards of a ratio study or constituted a statistically reliable sample.
- f. Because Nowacki offered no probative market-based evidence to demonstrate the property's correct market value-in-use for 2013 or 2017, he failed to make a case for lower assessments. Where a Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003). However, the Assessor conceded that there was no improvement on the property in 2013, and requested that we lower the 2013 assessment to \$2,200. We accept the Assessor's concession.

#### FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we order the 2013 assessment be reduced to \$2,200. We order no change to the 2017 assessment.

ISSUED: May 5, 2020

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.